



NATIONAL ASSOCIATION OF VETERANS PROGRAM ADMINISTRATORS

December 12, 2022

Cheryl Amita
Chief of Policy & Regulations
Education Service
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

RE: RIN 2900-AR56(P) Proposed Rule to 85/15 Rule Calculations, Waiver Criteria and Reports

Dear Ms. Amita,

On behalf of the membership of the National Association of Veterans' Program Administrators (NAVPA) representing over 400 institutions of higher learning and in conjunction with the organizations listed below, we would like to address the recent VA Notice of Proposed Rulemaking (NPR), Amendment to 85/15 Rule Calculations, Waiver Criteria, and Reports, RIN 2900-AR56(P) published in the federal registry. We appreciate the opportunity to address this on behalf of the School Certifying Official (SCO) community.

There are several assumptions made throughout this proposal that are erroneous regarding payment and tuition charges. For example, it is stated that, "the 85/15 Rule is a market validation tool designed to prevent schools from inflating tuition charges for VA education beneficiaries." However, per 38 CFR,

§ 21.9600 Overcharges.

(a) Overcharges by educational institutions may result in the disapproval of enrollments. VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges an individual, or receives from an individual, an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

Tuition and fee charges are reviewed and verified by a VA official or representative during a VA Compliance Survey to include non-VA student(s). If it is discovered that any institution has been overcharging GI Bill® beneficiaries, the Secretary has the authority under both §§ 9600 and 3690 to discontinue

education assistance to that institution. Under current law, there is no incentive for a school to inflate tuition charges for GI Bill® beneficiaries and penalties for doing so already exist under current statute.

A second area of concern in the NPR states, “If a school fails to enroll enough non-supported students, the cost of the program is presumed to be out of step with the competitive market and thus too expensive for VA to continue to support due to the burden on taxpayers.” This statement does not take into account many other reasons why less than 15% of Non-Supported students enroll in a program. For example, an institution could be developing a new program where enrollment has not yet stabilized to institutional norms given the timing or interest of the GI Bill® beneficiary population. Alternatively, a school could be the only institution in a wide geographical area offering a particular program of significant interest to beneficiaries leading to a skewing of the 85/15 desired ratio. Furthermore, the NPR statements makes no mention of the fact that GI Bill® students may be receiving the same scholarships as non-VA students at a given institution resulting in the VA paying less tuition to the school since the legal requirement is that the school report only net tuition cost to the VA for payment. Nor is there any mention of how many institutions are participating in the Yellow Ribbon program where the school pays 50% of financial tuition gaps on behalf of eligible GI Bill® beneficiaries that the VA will match.

As a third area of concern, the NPR wording that schools have “exploited and created loopholes since the inception of the Post 9/11 GI Bill®” by providing the same institutional aid to veterans and nonveteran students alike. NAVPA does not agree with this statement. Schools are required to have established charges for tuition and fees for both veterans and nonveterans. Per § 21.4210:

(4) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course;

A school would not have incentive to charge more than the market would allow as indicated in the statements listed above.

A fourth area of concern that NAVPA does not agree with is the statement that 38 CFR 21.4201(e)(2) should be used as “a tool to prevent schools from disguising tuition inflation”. As previously stated, schools are mandated to comply with § 21.9600 and § 3690 to continue receiving educational assistance from the

VA. The VA has the authority to address any instance of tuition disparity with any institution in question.

A fifth area of the NPR NAVPA does not agree with is the statement, “beneficiaries are not similarly incentivized to bargain shop” as all students have access to the public facing GI Bill® comparison tool per Executive Order 13607 to compare their benefits at approved institutions. Students take many factors into account when choosing an institution and historically, cost has been one of these factors.

In addition to the faulty and incomplete assumptions discussed above, we have concerns regarding the definition of a Supported and Non-Supported student in this NPR as the VA definition has been fluid at best and continues to evolve and change since October 1, 2020, when the VA first announced the reset of all 35% exemptions and presented new calculations for the 85/15 Rule. The new definitions of Supported and Non-Supported students were changed to include all students on payment plans and those who have not paid their tuition and fees in full by the 30th day of class. This included students who were on a payment plan at their institution. This definition was faulty because student payment plans are paid by the student, not the institution or the VA.

The proposed removal of current definitions in 38 CFR 21.4201(e)(2) of what constitutes a Supported student and by adding additional data to the 85% column, will not only inflate the number of counted Supported students but will lead to erroneous calculations reported to VA as these students were previously considered Non-Supported. Several schools offer scholarships to attract academically strong students. Usually, these scholarships are offered in lieu of procuring loans for disadvantaged students.

Since October 1, 2020, when the VA changed their definition of what constitutes a Supported student and changed the process of how to calculate the 85/15 report, several programs nationwide were suspended as a result of the new guidelines. Prior to the changes implemented by the VA, those same schools were considered to be in compliance. Our membership has reported several programs have been suspended across the country that contain no GI Bill® students including STEM and first responder programs. Our concern is that this NPR will once again limit student veterans as to how and where to use their GI Bill® benefits.

In August 2022, Public Law 117-174, the Ensuring the Best Schools for Veterans Act was signed into law. This law addressed this new definition of Supported students introduced by the VA and helped to correct the interpretation. P.L. 117-174 also clarified how the 35% exemption should be applied to schools approved under sections 3672 or 3675 of 38 CFR. This NPR does not acknowledge this legislation, nor does it explain how or if the NPR would apply to the schools that are 35% exempt.

NAVPA is concerned that the VA will require schools with the 35% exemption to calculate once again 85/15 under these proposed new guidelines, which will create more suspended programs at all institutions. Suspended programs prevent student veterans from enrolling in the program of their choice at their selected institution.

Regarding § 21.4201(h), NAVPA does not agree with amending paragraph (4) as most of the suggested list is currently required under Principles of Excellence using the College Scorecard. Nor does NAVPA agree with including the current graduation rate as many Community Colleges offer programs to prepare students to enter a university, which creates a lower graduation rate. There are institutions participating in the USAF GEM program where active duty students enroll to complete their general education requirements for the Community College of the Air Force (CCAF) but do not technically graduate from the school. Tracking a school's graduation rate without understanding these different instances, may not fully measure the success of student outcomes.

NAVPA does not agree with the proposed factors listed nor with the proposal to give the VA an open platform to create measures without stakeholder input. Per the NPR, "(although the list would not be all inclusive)", several of these actions are currently in place under the Department of Education (ED) as separate Rules. Implementing the same requirements within 85/15 would create redundancy.

The NPR requested input regarding the adverse impact including lost revenue for institutions. Given the previous issues outlined above that created suspended programs across the nation, NAVPA does not agree that the NPR will impact a small entity. Not only has revenue been affected by recent VA changes, but the extensive manhours from SCOs and VA employees alike in trying to compute the new 85/15 requirements. There is currently limited communication from the VA on several 35% exemption requests due to a shortage of ELRs. Schools have been requested to send 85/15 and 35% exemptions to a general VA email where there is no response to the institution. Yet schools are again being asked by VA representatives to provide additional 85/15 calculations and 35% exemption applications duplicating efforts.

There has been and still is much confusion among the SCOs and internal VA regarding 85/15 with the numerous definition changes and the 35% national reset. NAVPA proposes a pause on any new changes to 85/15 until the VA can fully interpret, understand, and administer Public Law 117-174, the Ensuring the Best Schools for Veterans Act to address the chaos that has been created by rapid change and lack of communication from the VA.

NAVPA appreciates the transparency of this NPR and would be interested in reviewing the data VA used to initiate this proposal. We can all agree that the

intricacies of the 85/15 Rule have become more complex, and the metrics used to drive these new recommendations would be welcome information.

We thank you for the opportunity to address this NPR as it is of much importance to stakeholders in preventing missteps and protecting our GI Bill® students. Addressing these concerns will help to alleviate confusion and hopefully allow programs to be reinstated so that students may participate in their chosen program at their institution of choice.

Thank you,



Dr. Jan Del Signore
President, NAVPA

On behalf of:

National Association of Veterans' Program Administrators (NAVPA)
Association of Veterans Education Certifying Officials (AVECO)
Career Education Colleges and Universities (CECU)
Council of College and Military Educators (CCME)
Florida Association of Veterans Education Specialists (FAVES)
National Association of Institutions for Military Education Services (NAIMES)
North Carolina Association of Certifying Veteran Administrators (NCACVA)
Oregon Association of Veterans School Certifying Officials (OrAVSCO)
SALUTE Veterans National Honor Society
Virginia Association of School Certifying Officials (VASCO)